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PATENT AND TRADEMARK OFFICE

*OF COUNSEL

October 17, 2013

VIA HAND DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

ACCEPTED/FILED

OCT 17 2013

Federal Communications Commission
Office of the Secretary

Re: *AU Docket No. 13-53*
Petition for Forbearance of NTUA Wireless, LLC

Dear Ms. Dortch:

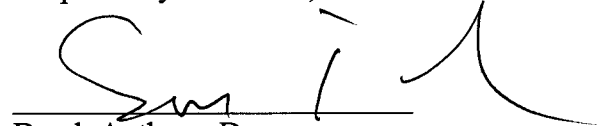
On behalf of NTUA Wireless, LLC, please find attached the Petition for Forbearance of NTUA Wireless, LLC. I note that this filing was electronically filed on September 30, 2013 via the Commission's Electronic Comment Filing System (ECFS) in WT Docket No. 10-208, but was not ultimately filed in AU Docket No. 13-53. For unknown technical reasons, the ECFS service was unavailable to process this filing on September 30, 2013 only for AU Docket No. 13-53.

Today, October 17, 2013, is the first day the Commission has been re-opened following the end of the federal government's lapse in funding that closed the Commission from October 1, 2013 to October 16, 2013. Similar to September 30, 2013, the ECFS system is not processing filings for AU Docket No. 13-53 at this time today. In order to ensure that this filing is made in AU Docket No. 13-53, NTUA Wireless, LLC is hand-delivering an original and five copies. This letter explains the potential discrepancy in the filing date of this Petition for Forbearance made in this docket, AU Docket No. 13-53, and the same filing that was submitted prior to the

lapse in government funding on September 30, 2013 in the other docket WT Docket No. 10-208.

Please contact me with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dyson', is written over a horizontal line.

Derek Anthony Dyson

Seth Lucia

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Attorneys for NTUA Wireless, LLC

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
Tribal Mobility Fund Phase I Auction)	AU Docket No. 13-53

**PETITION FOR FORBEARANCE OF
NTUA WIRELESS, LLC**

Pursuant to Section 10 of the Communications Act of 1937, as amended (the “Act”),¹ NTUA Wireless, LLC (“NTUA Wireless”), respectfully submits this Petition for Forbearance (“Petition”), requesting the Federal Communications Commission (“Commission”) forbear from enforcing Section 214(e)(5) of the Act and Section 54.207(b) of the Commission’s rules (which implements Section 214(e)(5) of the Act)² in connection with applications for conditional designation as eligible telecommunications carriers (“ETCs”) for purposes of participating in the Tribal Mobility Fund auction, Auction 902, currently scheduled for December 19, 2013.³ For the same reasons set forth by the Commission when it granted a blanket forbearance from the service area conformance requirement in the Mobility Fund Phase I, Auction 901 proceeding,⁴ NTUA Wireless seeks Commission forbearance with respect to the

¹ 47 U.S.C. § 160.

² 47 U.S.C. § 214 (e)(5); 47 C.F.R. § 54.207.

³ Tribal Mobility Fund Phase I Auction Rescheduled for December 19, 2013; Notice and Filing Requirements and Other Procedures for Auction 902, *Public Notice*, AU Docket No. 13-53, DA 13-1672 (“*Rescheduling Public Notice*”).

⁴ Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC

requirement that the service area of an ETC conform to the service area of any rural telephone company serving the same area in connection with a conditional ETC designation for participating in the Tribal Mobility Fund auction. Consistent with the forbearance granted in the Mobility Fund Phase I,⁵ the forbearance being sought by NTUA Wireless would be limited to the specific areas in which it becomes authorized to receive Tribal Mobility Fund support as part of Auction 902.

I. INTRODUCTION AND BACKGROUND

1. NTUA Wireless is majority-owned by the Navajo Tribal Utility Authority (“NTUA”), an enterprise of the Navajo Nation, and NTUA Wireless was specifically formed for the purpose of bringing advanced wireless telecommunications services to the residents of Tribal lands of the Navajo Nation, a Federally-recognized American Indian Tribe. NTUA Wireless is jointly managed by NTUA along with Commnet Newco, LLC (“Commnet”), the minority owner of NTUA Wireless. Commnet is an indirect, wholly-owned subsidiary of Atlantic Tele-
Network, Inc. (“ATN”), a publicly-traded corporation specializing in providing wireless telecommunications services to rural areas. As a “Tribally-owned or controlled entity” under the Commission’s Mobility Fund rules, NTUA Wireless is eligible to participate in Auction 902 with a pending ETC application⁶ and is eligible for a 25 percent bidding credit⁷ in the event it participates in Auction 902.

2. Under Section 214(e)(1) of the Act, an ETC must offer supported services and advertise the availability of and charges for such services “throughout the service area for

Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, Universal Service Reform – Mobility Fund, WT Docket No. 10-208, *Second Report and Order*, FCC 12-70 (2012) (“*2012 Forbearance Order*”).

⁵ *2012 Forbearance Order* at ¶ 2, 10.

⁶ *Rescheduling Public Notice* at ¶ 43.

⁷ *Id.* at ¶ 118.

which the designation is received[.]”⁸ When a competitive carrier seeks to serve an area already served by a rural telephone company,⁹ section 214(e)(5) of the Act requires that the competitive ETC’s service area must conform to the rural telephone company’s service area.¹⁰ If the service area differs from a rural telephone company’s existing service area, that rural service area must first be redefined under the process set forth under section 214(e)(5) of the Act and section 54.207 of the Commission’s rules that specify a series of steps that must be followed. The redefinition process takes a great deal of time to complete—certainly more time than the present Auction 902 schedule would allow before the auction occurs.

3. In the Mobility Fund Phase I, Auction 901 proceeding, the Commission faced circumstances that are similar in all material respects to this proceeding regarding the effect of the conformance requirement on entities petitioning for conditional ETC status in areas eligible for Mobility Fund support¹¹ The Commission granted a blanket forbearance from enforcing Section 214(e)(5) of the Act for conditional ETC designations, concluding that forbearance would further the public interest, advance the Commission’s goals of promoting access to mobile service in areas that are currently without service, and would not adversely affect rates or consumer protections.¹²

II. ARGUMENT

4. The Commission’s reasoning provided in its 2012 Forbearance Order apply to this proceeding and similarly militate for a blanket forbearance from enforcement of the section 214(e)(5) service area conformance requirement to petitions for conditional ETC designations in areas eligible for Tribal Mobility Fund support. Forbearing from the service area

⁸ 47 U.S.C. § 214(e)(1).

⁹ 47 U.S.C. § 153(44).

¹⁰ 47 U.S.C. § 214(e)(5); *see also*, 47 C.F.R. § 54.207(b).

¹¹ *See 2012 Forbearance Order* at ¶¶ 3-8.

¹² *Id.* at ¶¶ 9-21.

conformance requirements will eliminate the need for redefinition of any rural telephone company service areas in the context of the Tribal Mobility Fund and will prevent that requirement from becoming an obstacle to participation in the Tribal Mobility Fund. In the present circumstances of the Tribal Mobility Fund proceeding, an order that declares the Commission's forbearance would further the public interest, advance the Commission's goals of promoting access to mobile service in areas that are currently without service, and would not adversely affect rates or consumer protections.¹³

5. The Commission may forbear from applying any requirement of the Act or its regulations to a telecommunications carrier if it determines that: (1) enforcement of the requirement is not necessary to ensure that the telecommunications carrier's charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest.¹⁴

6. As in the Mobility Fund Phase I proceeding, the Tribal Mobility Fund will support the expansion of current and next generation wireless networks and will therefore expand the choice of telecommunications services for consumers in the relevant areas. The resulting competition will help ensure just, reasonable, and nondiscriminatory offerings of services. Thus, the first prong in the Commission's analysis is met to allow forbearance from enforcement of the service area conformance requirement.¹⁵

7. With regard to the effects on consumer protection, such protections will not be lost if the Commission forbears enforcement of the service area conformance requirement.

¹³ *Id.*

¹⁴ 47 U.S.C. § 160(a); *see also*, 2012 Forbearance Order at ¶ 9.

¹⁵ 2012 Forbearance Order at ¶ 13.

As in the Mobility Fund Phase I proceeding, consumers will benefit from the use of Tribal Mobility Fund support to expand current and next generation mobile services and will therefore not be harmed.¹⁶ Moreover, every party receiving Tribal Mobility Fund support must certify that it will satisfy applicable consumer protection and service quality standards in its service area.¹⁷

8. Forbearance from enforcement of the service area conformance requirement is also in the public interest. Similar to the reasoning from the Commission's Mobility Fund Phase I proceeding, parties that otherwise may seek Tribal Mobility Fund support to extend services may be discouraged from participating in Auction 902 absent forbearance because such carriers could otherwise be required to take on unsupported ETC obligations in portions of rural carriers' study areas.¹⁸ Moreover, in the limited circumstances of the Tribal Mobility Fund proceeding, service area conformance is not essential to protect the ability of rural telephone companies to continue to provide service and cream skimming concerns are not relevant because the amount of Tribal Mobility Fund support is not linked to the support received by an overlapping rural carrier.¹⁹ In short, forbearance will not harm competitive market conditions.²⁰

III. CONCLUSION

For the reasons provided above and all other relevant reasons set forth by the Commission in its *2012 Forbearance Order*, NTUA Wireless urges the Commission to similarly issue an order specifying that it will forbear from applying the conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of its rules for conditional ETC designations

¹⁶ *Id.* at ¶ 14.

¹⁷ *Id.*; *see also*, 47 C.F.R. § 54.202(a)(3).

¹⁸ *Id.* at ¶ 15.

¹⁹ *Id.* at ¶ 18.

²⁰ *Id.* at ¶ 19.

in areas eligible for Tribal Mobility Fund support in order to participate in Auction 902 and receive related support.

Respectfully submitted,

/s/ Seth Lucia

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September 30, 2013